

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

RICHARD A. HALEY, JR.	)	
Appellant,	)	
	)	
v.	)	C.A. No. 2006-03-194
	)	
DEPARTMENT OF TRANSPORTATION,	)	
DIVISION OF MOTOR VEHICLES,	)	
Appellee.	)	

Submitted: June 5, 2006

Decided: June 19, 2006

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**DECISION DENYING APPEAL**

On February 6, 2006 Richard A. Haley, Jr. (“appellant”) was arrested on various criminal charges, including driving under the influence of drugs in violation of 21 Del. C. § 4177(a). Appellant claims that at the time of the arrest, the arresting police officer directed him to sign a number of documents, including form MV-529, titled “Official Notice and Order of Revocation.” Form MV-529 is provided to persons arrested for driving under the influence. It includes the terms surrounding license revocation and the procedure for requesting a probable cause hearing to appeal the revocation. Towards the bottom of the document, just under the space provided for the arresting officer’s signature it reads: “PLEASE NOTE: THE DEFENDANT MUST RECEIVE THE WHITE COPY OF THIS NOTICE WITHOUT EXCEPTION!” Appellant claims that although he signed the document, he was not provided with a copy of it, nor was he provided adequate time

to read or understand what he was signing. Appellee, Department of Transportation Division of Motor Vehicles (“appellee”), does not dispute appellant’s assertion that he was not given a copy of the form. Subsequently, appellant was transferred to the Howard R. Young Correctional Facility (“Howard Young”) due to his inability to post a \$28,360.00 secured bond. While incarcerated, appellant claims he briefly met with an investigator from the Public Defender’s Office who failed to notify him of his obligation to request a probable cause hearing within fifteen days of his arrest. Furthermore, the Public Defender assigned to appellant for his preliminary hearing similarly failed to notify appellant of his obligation. Appellant claims that as a result, he had no notification until he retained his present counsel who filed the appropriate request for revocation hearing on February 24, 2006. According to appellee, the license revocation became effective on February 22, 2006. Appellant remained incarcerated until March 21, 2006 when his bond was substantially reduced after the State of Delaware entered a *nolle prosequi* on the most serious charges pending.

#### ANALYSIS

Appellee argues this Court lacks appellate jurisdiction since no probable cause hearing took place on the matter. In *DeSantis v. Shaham*, the Superior Court noted that 21 *Del.C.* § 2744 did not provide the appellant an avenue of appeal where no hearing was held. 1995 WL 339175 (Del.Super.). See also *Wynne v. Shahan*, 2004 WL 1067518 (Del.Com.Pl.), (denying jurisdiction over the appellant’s appeal of a denial of probable cause hearing in the Court of Common Pleas). As the above case law indicates, this Court lacks the requisite jurisdiction to hear a direct appeal from a decision to deny a probable cause hearing.

### **CONCLUSION**

That is not to say that appellant is left without redress. As described in *DeSantis*, the Superior Court may review, by *certiorari*, even when there is no right to direct appeal. This Court, however, has no power to issue a writ of *certiorari* to a lower court. *Brandywine Apartments Assocs. v. Justice of the Peace Court*, 1999 WL 33255921 (Del.Com.Pl).

### **ORDER**

For the reasons stated herein, this Court lacks jurisdiction to decide an appeal where no probable cause hearing has taken place.

**IT IS SO ORDERED.**